

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. (This is a GIL).

February 7, 2001

Dear Xxxxx:

This letter is in response to your letter dated October 2, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I'm writing to respectfully request a ruling regarding the application of Illinois' telecommunications taxes to our business activities outlined below:

FACTS

COMPANY is in the business of providing DSL (Digital Subscriber Line) services to customers. DSL uses existing copper telephone lines to transmit data packets at very high speed. Our service is most commonly used for high-speed access to the Internet. For this service, we charge our customers a recurring monthly fee ranging from \$39.95 to \$195.00, depending on the speed of service the customer selects.

In additions, COMPANY also install a modem device at the customer's premise that allows them to use our DSL service from their personal computer. This installation process includes inspecting wiring, making various wiring connections at the telephone box, plugging in the modem to the PC and wall jack, and configuring the modem for the service speed the customer has selected. For this installation/activation service, we charge our customers approximately \$225. We also charge \$350 for the modem. The charge for the modem is separately stated on the invoice.

RULING REQUEST

I respectfully request the following legal rulings:

1. Whether, under the facts described above, the monthly recurring DSL charges subject to the telecommunications taxes?

2. Whether the one time installation/activation charges subject to the telecommunications taxes?
3. Whether the charge for the modem itself subjects to the telecommunications taxes?
4. Assuming telecommunications tax applies to our business, can we pass this on to our customers?

We have recently registered with Department of Revenue for telecommunications tax without the knowledge of our responsibility in submitting and collecting such taxes. Consequently, we have received Notice of Non-Filing requesting filing of returns by mid October. We appreciate your consideration of the matters described herein and look forward to your response eagerly.

Please contact me if you have any question regarding this request.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition). Equipment, such as modems, that you sell to customers will be subject to the Retailers' Occupation Tax Act.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

From the limited amount of information contained in your letter, it appears that you are in the business of transmitting messages or information. Provision of Digital Subscriber Lines (DSL) services is telecommunications and therefore is taxable under the Telecommunications Excise Tax. Telecommunication retailers are required to collect the Telecommunications Excise Tax from their customers unless provided with a certificate of resale.

You have indicated in subsequent conversations with us that COMPANY is not an Internet Service Provider, but sells DSL services to Internet Service Providers. It is our general understanding that most Internet Service Providers do not, as part of their billing, charge customers for such line charges, but instead, pay to their telecommunication providers all transmission costs that they incur in providing the service. They generally do not provide certificates of resale to their telecommunication providers. Generally, the Internet Service Providers' customers pay their telecommunication providers for all transmission costs that they incur while using the service. The single monthly fee charged by Internet Service Providers, which often represents a flat charge for a package of items including Internet access, E-mail, and electronic newsletters is generally not be subject to the Telecommunications Excise Tax.

Activation charges are taxable charges. Gross Charges, however, does not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges (Section 2(a)(4) of the Act). Customer equipment includes, but is not limited to, all items generally classified as customer equipment or terminal equipment, such as telephone instruments and station sets, dialers, modems, private branch exchanges (PBX's), inside wiring, facsimile machines, pagers and non-electronic associated items such as documentation, manuals and furniture. To be exempt, the charges for customer equipment must be disaggregated and separately identified from other charges in the books and records of the retailer. See Section 495.100(b). Such items of customer equipment may be leased, rented or sold to one customer or a group of customers without being included in the gross charges, but will be subject to Retailers' Occupation or Use Taxes.

As stated above, if the charges for equipment are separately identified and disaggregated, the equipment charges will be subject to Retailers' Occupation Tax. This being the case, the installation charges may also be subject to the Retailers' Occupation Tax. See the enclosed copy of Section 130.450. As you can see from this regulation, such charges are included in gross receipts subject to Retailers' Occupation Tax ("ROT") unless they are the subject of a separate agreement. A separate agreement would include an invoice that separately lists the installation charge and is also signed by the customer. If, however, such charges are not separately identified and disaggregated on the customer bill, they are subject to the Telecommunications Excise Tax.

Please note that a proposed amendment to Section 495.100 is currently pending. Please see enclosed copy of 24 Ill. Reg. 13631 Issue #37.

Effective January 1, 1998, the Telecommunications Municipal Infrastructure Maintenance Fee Act (Act) (35 ILCS 635/1 et seq.) provides for the imposition of various fees upon telecommunications retailers.

Section 15 of the Act imposes a State infrastructure maintenance fee upon telecommunications retailers, as that term is defined in 35 ILCS 635/10, "equal to 0.5% of all gross charges charged by the telecommunications retailer to service addresses in this State for telecommunications, other than wireless telecommunications, originating or received in this State." (35 ILCS 635/15(b).) Section 15 also provides for an optional infrastructure maintenance fee which telecommunications retailers may pay "with respect to the gross charges charged by the telecommunications retailer to service addresses in a particular municipality for telecommunications, other than wireless telecommunications, originating or received in the municipality...." (35 ILCS 635/15(c).) These fees are collected, enforced and administered by the Illinois Department of Revenue. (35 ILCS 635/25(b))

Section 20 of the Act provides that municipalities may impose a municipal infrastructure maintenance fee upon telecommunications retailers. This fee is based upon gross charges charged by the telecommunications retailers to service addresses in the municipality for telecommunications originating or received in the municipality. This fee is collected, enforced, and administered by the municipality imposing the fee. (35 ILCS 635/25(c).)

Illinois municipalities are also authorized to impose a municipal telecommunications tax. (See 65 ILCS 5/8-11-17.) The tax is imposed on the act or privilege of originating in such municipality or receiving in such municipality intrastate or interstate telecommunications by a person at a rate not to exceed 5% of the gross charges for such telecommunications purchased at retail by such person. (See 65 ILCS 5/8-11-17(a)(1) and 65 ILCS 5/8-11-17(a)(2).) This tax may only be imposed if the municipality does not have in effect an occupation tax imposed on persons engaged in the business

of transmitting messages by means of electricity as authorized by Section 8-11-2 (65 ILCS 5/8-11-2) of the Illinois Municipal Code. The municipality imposing the tax provides for its administration and enforcement, not the Illinois Department of Revenue. Therefore, questions regarding this tax should be addressed to the individual municipalities imposing it. There is no equivalent statute for county governments.

In addition, the Emergency Telephone System Act provides that "[t]he corporate authorities of any municipality or any county may, subject to the limitations of subsections (c), (d), and (h), and in addition to any tax levied pursuant to Section 8-11-2 of the Illinois Municipal Code, impose a monthly surcharge on billed subscribers of network connection provided by telecommunication carriers engaged in the business of transmitting messages by means of electricity originating within the corporate limits of the municipality or county imposing the surcharge at a rate per network connection determined in accordance with subsection (c)." (See 50 ILCS 750/15.3(a) and (c).) "The surcharge authorized by this Section shall be collected from the subscriber by the telecommunications carrier providing the subscriber the network connection as a separately stated item on the subscriber's bill." (50 ILCS 750/15.3(f).) This surcharge is paid to the municipality, county or Joint Emergency Telephone System Board. (See 50 ILCS 750/15.3(g).) Questions regarding the surcharge should be addressed to the municipality or county imposing it.

In regards to sales and installation of modems where the charges would not be subject to the Telecommunications Excise Tax, please note that construction contractors in Illinois are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. See 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. However, please note that Section 1 of the Retailers' Occupation Tax Act states that "[c]onstruction contracts for the improvement of real estate consisting of engineering, installation, and maintenance of voice data, video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price". Consequently, even if some items used in such contracts are not permanently affixed, the liability incurred by the contractor is a Use Tax liability if the provisions of this section are met.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.

